his minority, and the expenses incurred because of his injury and death. *Pere Marquette R. Co. v. Chadwick* (1917, Ind. App.) 115 N. E. 678.

The old common law assize of nuisance was maintainable only by the tenant of the freehold. 3 *Bl. Com.* 220-223. An action on the case for damages for interference by nuisance with the use and enjoyment of property is maintainable by one in possession. *Bentley v. Atlanta* (1893) 92 Ga. 623, 18 S. E. 1013. But the cases are in conflict (due, it is submitted, to confusion into which the courts seem to fall when the element of nuisance is introduced) whether a plaintiff having no proprietary or possessory interest in the premises may recover for a nuisance which injures his health. Recovery was allowed in *Ft. Worth, etc. R. Co. v. Glenn* (1904) 97 Tex. 586, 80 S. W. 992; *Hosmer v. Republic Iron Co.* (1913) 179 Ala. 415, 60 So. 801; *Hunt v. Lowell* (1864, Mass.) 8 Allen 169; *contra, Ellis v. Kansas City, etc. R. Co.* (1865) 63 Mo. 131. The principal case adopts the affirmative view and makes a novel application of it to a situation where the nuisance injures not the plaintiff's health but his common law and statutory right to his child's services. At common law the father could recover for loss of services only up to the time of the child's death. *Osborn v. Gillett* (1873) L. R. 8 Ex. 88. The statute gives him a new right of action for lost services from the time of death until the child would have reached majority. *Mayhew v. Burns* (1885) 103 Ind. 328, 333, 2 N. E. 793, 796. The defendant, however, is liable to the parent only if he would have been liable to the child had the latter been injured, but not killed. *Ohio & Miss. R. Co. v. Tindall* (1859) 13 Ind. 366. In adopting the view of liability for nuisance which impairs health regardless of proprietary interest and in applying it to the principal case, the court reaches, it is submitted, a sound conclusion.

C. S. B.

QUASI-CONTRACTS—RIGHT TO RETURN OF ENGAGEMENT RING ON BREACH OF PROMISE TO MARRY.—The defendant broke an engagement to marry and the plaintiff brought an action for recovery of the engagement ring. *Held,* that the plaintiff could recover, since there is an implied condition that the ring shall be returned if the engagement is broken. *Jacobs v. Davis* [1917] 2 K. B. 532.

When the defendant breaks a contract, the plaintiff has an action in assumpsit or the alternative remedy of suing for the value of the benefit received by the defendant. *Brown v. Woodbury* (1903) 183 Mass. 279, 67 N. E. 327. *Kicks v. State Bank of Lisbon* (1904) 12 N. D. 576, 98 N. W. 408. The breach, however, must be one so materially affecting the contract as to have the same effect as an absolute repudiation thereof. *Cornwall v. Henson,* (C. A.) [1900] 2 Ch. 298. *Rhymney Ry. Co. v. Brecon, etc., Ry. Co.* (1900, C. A.) 69 L. J. Ch. 813, 83 L. T. Rep. N. S. 111. The court in the principal case went one step further and allowed the plaintiff to recover the specific article, treating the delivery of the ring either as a pledge, or as a gift subject to a condition subsequent defeating the gift in case the marriage is not consummated. However, it is submitted that the real duty enforced by the court was of an equitable nature, more closely allied to quasi-contract than to contract, based on the principle that the defendant after repudiating a contract should not be allowed to keep articles given in reliance upon the contract and in expectation of its performance. See *Robinson v. Cumming* (1742, Ch.) 2 Atk. 409.

J. N. M.

TORTS—NEGLIGENCE OF MANUFACTURER—RESTAURANT KEEPER'S LIABILITY TO GUEST.—The plaintiff, who ordered at the defendant's restaurant a piece of cake, baked and prepared for serving by the defendant, was injured by biting

upon a metallic nail concealed in the cake. *Held,* that the defendant was not liable. *Jacobs v. Childs Co.* (1917, N. Y. Mun. Ct.) 166 N. Y. Supp. 798.

The court says that this case is indistinguishable in principle from *Hasbrouck v. Armour & Co.* (1909) 139 Wis. 357, 121 N. W. 157. That was a suit for injuries sustained from using a piece of soap containing a concealed needle. But in that case the soap had been manufactured by the defendant, sold to a retailer and purchased from the retailer by the plaintiff, so that there was no privity of contract between the manufacturer and the plaintiff. The principles applicable to such a situation were discussed in *MacPherson v. Buick Motor Co.* (1916) 217 N. Y. 382, 111 N. E. 1050; commented upon in 25 YALE LAW JOURNAL 679. In the principal case, however, there was privity of contract between the defendant manufacturer of the cake and the injured plaintiff. It is true that there is no implied warranty on the part of the restaurant keeper that the food he serves shall be wholesome and fit for consumption. *Merrill v. Hodson* (1914) 88 Conn. 314, 91 Atl. 533; see 24 YALE LAW JOURNAL 73. But it would seem that where there is privity of contract between the purchaser and the manufacturer of food it may well be held that there is a duty of care in preparing the food which would render the manufacturer liable for injuries due to a foreign substance, such as a nail, contained in the food. Whatever one may think of the policy of exempting manufacturers from liability for injuries sustained by a third person who dealt only with the retailer, as in the *Hasbrouck* case, it is clear that such a decision is not a precedent for the principal case. It is regrettable that the court did not note this distinction and discuss more thoroughly the real point involved in the facts before it. The distinction taken in the opinion between a foreign substance of a sort which is used in manufacturing the article—as a needle concealed in the seam of a flannel garment—and a foreign substance of a sort having no connection with the manufacture—as a nail concealed in cake—seems of doubtful validity.

VENDOR AND PURCHASER—PROCEEDS OF INSURANCE—RETENTION AS SECURITY.—The defendant sold to the plaintiff, as one transaction, a farm and the chattels thereon for $3000. The plaintiff gave the defendant a mortgage on the chattels to secure the payment of $1500 of the whole purchase price. The vendor retained the title to the real estate. The contract provided that the plaintiff should keep the premises insured for the security of the defendant and that upon the payment of the chattel mortgage the defendant should discharge the mortgage and give the plaintiff a warranty deed of the land, taking a mortgage on the real estate for $1500, the balance of the purchase price. The dwelling was destroyed by fire. Neither party was willing to rebuild. The real estate was now worth but $800. The plaintiff filed a bill praying that the insurance money be applied in discharge of the chattel mortgage debt, then due, and that a warranty deed of the land be delivered. *Held,* that the insurance money stood in the place of the property destroyed and that the plaintiff could not require its application to discharge the chattel mortgage. *Baker v. Rushford* (1917, Vt.) 101 Atl. 769.

No case has been found in which a situation similar to that in the principal case was presented for decision. But see *Thorp v. Croto* (1907) 79 Vt. 390, 65 Atl. 562, 10 L. R. A. (N. S.) 1166 with note. In that case the mortgagee was ordered to apply the proceeds of the insurance upon the mortgage debt as the payments fell due. Part of the debt was due but no question as to the sufficiency of the security was there raised. There are a number of cases in which it is said that the insurance money takes the place of the property, but in those cases